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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA  
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Case No. 2:17-cv-01074-RFB-NJK

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**ORDER**

THE BANK OF NEW YORK MELLON FKA  
THE BANK OF NEW YORK, AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS OF  
CWALT, INC., ALTERNATIVE LOAN  
TRUST 2006-HY11, MORTGAGE  
PASSTHROUGH CERTIFICATES, SERIES  
2006- HY11,

Plaintiff,

v.

EMILY RUDELL; SFR INVESTMENTS  
POOL 1, LLC; MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.;  
WIGWAM RANCH SQUARE  
HOMEOWNERS ASSOCIATION; DOE  
INDIVIDUALS I-X, inclusive, and ROE  
CORPORATIONS I-X, inclusive,

Defendants.

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SFR INVESTMENTS POOL 1, LLC,

Counter-Claimant/Cross-Claimant,

v.

THE BANK OF NEW YORK MELLON FKA  
THE BANK OF NEW YORK, AS TRUSTEE  
FOR THE CERTIFICATEHOLDERS OF  
CWALT, INC., ALTERNATIVE LOAN  
TRUST 2006-HY11, MORTGAGE  
PASSTHROUGH CERTIFICATES, SERIES  
2006- HY11; MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC. AS  
NOMINEE BENEFICIARY FOR  
COUNTRYWIDE HOME LOANS, INC.;  
EMILY RUDELL, an individual,

Counter-Defendant/Cross-Defendants.

1           **I.       INTRODUCTION**

2           Before the Court are renewed Motions for Summary Judgment filed by Plaintiff/Counter-  
3 Defendant The Bank of New York Mellon fka The Bank of New York, as Trustee for the  
4 Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-HY11, Mortgage Pass-Through  
5 Certificates, Series 2006-HY11 (“BNY”) (ECF No. 55) and by Defendant/Counter-  
6 Claimant/Cross-Claimant SFR Investments Pool 1, LLC (“SFR”) (ECF No. 57).

7           In the complaint filed April 18, 2018, BNY seeks quiet title/declaratory judgment, an order  
8 directing a foreclosure sale, and injunctive relief. ECF No. 1. For the reasons stated below, the  
9 Court denies BNY’s Motion for Summary Judgment, grants SFR’s Motion for Summary  
10 Judgment, and dismisses the remainder of BNY’s complaint against the remaining Defendants.

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12           **II.       FACTUAL BACKGROUND**

13           The Court finds the following facts to be undisputed, and finds no disputed facts.

14           On or about March 27, 2006, Defendant/Cross-Defendant Emily Ruddell purchased real  
15 property located at 8601 Little Fox Street, Las Vegas, Nevada 89123 (APN: 177-14-311-079) (“the  
16 Property”). Ruddell financed ownership of the property by way of a loan in the amount of  
17 \$207,200.00 evidenced by a note and secured by a deed of trust (the senior deed of trust) recorded  
18 March 31, 2006.

19           The senior deed of trust was assigned to Plaintiff/Counter-Defendant BNY on January 21,  
20 2010.

21           On October 7, 2010, Wigwam Ranch Square Homeowners Association (“Wigwam”),  
22 through its agent Alessi & Koenig, LLC (“Alessi”), recorded a Notice of Delinquent Assessment.  
23 Per the notice, the amount due to the HOA was \$801.00, which includes \$751.00 of collection  
24 and/or attorneys’ fees, assessments, interest, late fees, and service charges, and \$50.00 of collection  
25 costs.

26           On January 31, 2011, Wigwam, through its agent Alessi, recorded a Notice of Default and  
27 Election to Sell. The notice states the amount due to the HOA was \$1,933.00, but does not specify  
28 whether it includes dues, interest, fees and collection costs in addition to assessments.

1 On April 11, 2011, Ruddell filed for Chapter 7 bankruptcy protection with the United States  
2 Bankruptcy Court, District of Nevada, designated case no. 11-14891-BAM. She listed the  
3 Property on her bankruptcy schedules. She received her discharge on June 6, 2011, though the  
4 bankruptcy was not terminated until June 25, 2013.

5 On November 5, 2012, Wigwam, through its agent Alessi, recorded a Notice of Trustee's  
6 Sale. The notice states the amount due to the HOA was \$3,979.00.

7 Wigwam foreclosed on the property on or about December 5, 2012. A Trustee's Deed in  
8 favor of SFR was recorded December 10, 2012. The sale price at the foreclosure sale was  
9 \$6,200.00.

### 10 11 **III. PROCEDURAL BACKGROUND**

12 BNY filed its complaint on April 18, 2017. ECF No. 1. SFR filed its answer on June 19,  
13 2017, with cross-claims against Mortgage Electronic Registration Systems, Inc. and Emily Ruddell  
14 and a counter-claim against BNY. BNY filed its answer on July 10, 2017. ECF No. 19.

15 On August 24, 2017, the Court entered a scheduling order. ECF No. 28. Discovery closed  
16 on December 4, 2017. Id. On December 4, 2017, Wigwam filed its answer. ECF No. 39. Also  
17 on this date the Court terminated Mortgage Electronic Registration Systems, Inc. from the action.  
18 ECF No. 38.

19 On January 19, 2018, BNY and SFR each filed motions for summary judgment. ECF Nos.  
20 45, 46. On January 22, 2018, the Court Clerk entered default as to Ruddell. ECF No. 47.

21 On July 13, 2018, the Court denied the pending motions for summary judgment without  
22 prejudice and issued a stay in the case pending the Nevada Supreme Court's decision on a certified  
23 question of law regarding NRS 116's notice requirement in Bank of N.Y. Mellon v. Star Hill  
24 Homeowners Ass'n, Case No. 2:16-cv-02561-RFB-PAL. ECF No. 52. The Nevada Supreme  
25 Court published an answer to the certified question on August 2, 2018. SFR Investments Pool 1,  
26 LLC v. Bank of New York Mellon, 422 P.3d 1248 (Nev. 2018).

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1 On August 23, 2018, BNY and SFR each filed the instant renewed motions for summary  
2 judgment. ECF Nos. 55, 57. The Court will now lift the stay in this case and consider the pending  
3 motions.

#### 4 5 **IV. LEGAL STANDARD**

6 Summary judgment is appropriate when the pleadings, depositions, answers to  
7 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no  
8 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of  
9 law.” Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When  
10 considering the propriety of summary judgment, the court views all facts and draws all inferences  
11 in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim, 747 F.3d 789,  
12 793 (9th Cir. 2014). If the movant has carried its burden, the non-moving party “must do more  
13 than simply show that there is some metaphysical doubt as to the material facts . . . . Where the  
14 record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there  
15 is no genuine issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007) (alteration in original)  
16 (internal quotation marks omitted).

#### 17 **V. DISCUSSION**

##### 18 **a. SFR’s Motion for Summary Judgment**

19 SFR seeks summary judgment as to BNY’s claims against it, and as to its cross- and  
20 counter-claims against BNY and Ruddell. Only BNY responded to SFR’s motion.

##### 21 **i. Statute of Limitations**

22 SFR argues that each of BNY’s claims are barred by the applicable statute of limitations.  
23 For statute of limitations calculations, time is computed from the day the cause of action accrued.  
24 Clark v. Robison, 944 P.2d 788, 789 (Nev. 1997). The foreclosure sale occurred on December 10,  
25 2012. The Court finds that the statute runs from this date. The complaint was filed on April 18,  
26 2017, over four years later. Contrary to Plaintiff’s argument, the claim did not accrue on  
27 September 18, 2014, the date of the Nevada Supreme Court decision in SFR Investments Pool 1  
28 v. U.S. Bank, 334 P.3d 408 (Nev. 2014). The Nevada Supreme Court has held that SFR

1 Investments applies retroactively and constitutes an interpretation of NRS 116.3116 rather than a  
2 change in law. K&P Homes v. Christiana Trust, 133 Nev. Adv. Op. 51 (July 27, 2017). Because  
3 NRS 116.3116 was in effect at the time of the foreclosure sale, the Court finds that Plaintiff's claim  
4 accrued at that time of the foreclosure.

5 BNY's claims are therefore entirely barred by the statute of limitations. In its complaint,  
6 BNY alleges that its senior deed of trust encumbers the property because: (1) Chapters 116 of the  
7 Nevada Revised Statutes ("NRS") is facially unconstitutional; (2) the notices provided in this case  
8 were unconstitutional as-applied; (3) Wigwam would have rejected any tender of the super-priority  
9 amounts; and (4) the foreclosure sale was commercially unreasonable and thus SFR was not a bona  
10 fide purchaser for value. Insofar as BNY's claims relates to any right protected by NRS 116.3116  
11 and the violation of that right, the claims carry a three-year statute of limitations pursuant to NRS  
12 11.190(3)(a), which applies to actions upon a liability created by statute. Insofar as BNY's claims  
13 rely on constitutionality and equity arguments, they fall within the four-year catch-all provision at  
14 NRS 11.220. Because the Court finds that BNY's claims can only fall under the three-year or  
15 four-year statute of limitations, the claims are foreclosed.

16 The Court finds that BNY is not entitled to the five-year statute of limitations for certain  
17 quiet title actions pursuant to NRS 11.070 and 11.080. The statute of limitations provided by these  
18 code sections only apply when the plaintiff actually "was seized or possessed of the premises."  
19 Nev. Rev. Stat. §§ 11.070, 11.080; see also Saticoy Bay LLC Series 2021 Gray Eagle Way v.  
20 JPMorgan Chase Bank, N.A., 388 P.3d 226, 232 (Nev. 2017) (NRS 11.080); Bissell v. Coll. Dev.  
21 Co., 469 P.2d 705, 707 (Nev. 1970) (NRS 11.070). NRS 11.070 and 11.080 do not apply to claims  
22 by parties that held only a lien interest, not title.

23 The Court also finds that NRS 106.240 does not extend the applicable statute of limitations  
24 to a ten-year term. NRS 106.240 does not create a statute of limitations; "NRS 106.240 creates a  
25 conclusive presumption that a lien on real property is extinguished ten years after the debt becomes  
26 due." Pro-Max Corp. v. Feenstra, 16 P.3d 1074, 1077 (Nev. 2001).

27 BNY incorrectly asserts that no statute of limitations applies to seek declaratory relief. "A  
28 claim for declaratory relief is subject to a statute of limitations generally applicable to civil claims."

1 Zuill v. Shanahan, 80 F.3d 1366, 1369–70 (9th Cir. 1996). While Nevada law recognizes that  
2 “[t]he statute of limitations applies differently depending on the type of relief sought” and that  
3 “claimants retain the right to prevent future violations of their constitutional rights [through  
4 prospective relief],” City of Fernley v. State, Dep’t of Tax, 366 P.3d 699, 706 (Nev. 2016), the  
5 relief BNY seeks is retrospective in nature. BNY argues that it seeks prospective relief as to the  
6 ongoing validity of its deed of trust. But to find in favor of BNY on this claim, the Court would  
7 first need to award retrospective relief by finding that the foreclosure sale did not extinguish the  
8 senior deed of trust or that the foreclosure sale was void, meaning a deed of trust existed on which  
9 the judicial foreclosure claim could proceed. The statute of limitations as outlined above therefore  
10 applies.

11 BNY invokes equitable tolling and the relation back doctrine to argue that the Court should  
12 date BNY’s claims back to January 21, 2010, the date the deed of trust was assigned to BNY.  
13 BNY, states without support in the record, that January 21, 2010 is also the date that BNY initiated  
14 nonjudicial foreclosure proceedings and recorded a notice of breach. The relation back doctrine  
15 allows an amendment to a pleading to relate back to the date of the original pleading and is  
16 therefore inapplicable to this case, where BNY has filed only the instant complaint. See Fed. R.  
17 Civ. P. 15(c)(1). BNY’s argument that a Notice of Breach and Election to Sell can be substituted  
18 for a formal pleading is unsupported by case law and by the plain language of Rule 15. Further,  
19 the Court does not identify any Notice of Breach and Election to Sell initiated by BNY or dating  
20 back to January 2010. BNY’s argument for the imposition of equitable tolling does not appear to  
21 be based on the facts as presented by BNY’s complaint and as supported by the record. In any  
22 event, the Court does not find that BNY has demonstrated the “excusable delay” necessary for the  
23 application of equitable tolling. City of N. Las Vegas v. State Local Gov’t Employee-Mgmt.  
Relations Bd., 261 P.3d 1071, 1077 (Nev. 2011).

24 Because the statute of limitations forecloses BNY’s complaint entirely, summary judgment  
25 is granted in favor of SFR against BNY. The Court need not reach SFR’s alternative arguments  
26 for summary judgment against BNY.

## 27 **ii. Cross- and Counter-Claims**

28 SFR seeks summary judgment in its favor on its cross-claims against Ruddell and its

1 counter-claim against BNY. It requests declaratory relief that the foreclosure sale vested title in  
2 SFR, and that BNY and Ruddell lack an interest in the Property. BNY responds that SFR cannot  
3 be a bona fide purchaser because it knows it “risked litigation” by buying properties at foreclosure  
4 sales. However, because the Court finds that BNY cannot allege any legally cognizable defects  
5 with the sale, the bona fide purchaser doctrine is not at issue in this case. See Nationstar Mortg.,  
6 LLC v. SFR Investments Pool 1, LLC, No. 70653, 2017 WL 1423938, at \*3 n.4 (Nev. App. Apr.  
7 17, 2017) (unpublished).

8 Moreover, as SFR is the record title holder, it is BNY’s burden to show that the sale should  
9 be set aside. See Nationstar Mortg., LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon, 405  
10 P.3d 641, 646 (Nev. 2017). For the reasons explained above, the Court finds that BNY is unable  
11 as a matter of law to show that it has any ongoing interest in the Property that can be enforced  
12 against SFR. The Court can further identify in the record no evidence of a preserved interest in  
13 the Property held by Ruddell. The Court therefore grants summary judgment as to SFR’s counter-  
14 claim against BNY and cross-claim against Ruddell and grants declaratory relief.

15 **b. BNY’s Motion for Summary Judgment**

16 BNY seeks summary judgment as to its claims against all Defendants. BNY’s claims  
17 against SFR are foreclosed due to the statute of limitations as discussed above. For the same  
18 reason, BNY’s claims are foreclosed against Wigwam, which raised and therefore preserved a  
19 statute of limitations defense in its answer. Though Wigwam did not respond to BNY’s Motion  
20 for Summary Judgment, BNY had a “full and fair opportunity” to defend against the statute of  
21 limitations argument in its response to SFR’s motion. See Nelson v. Waste Mgmt. of Alameda  
22 Cty., Inc., 33 F. App’x 273, 274 (9th Cir. 2002) (unpublished) (quoting In re Rothery, 143 F.3d  
23 546, 549 (9th Cir. 1998) (upholding dismissal on basis of statute of limitations where the defense  
24 was preserved in the original answer to the complaint, but not raised in a motion for summary  
judgment).

25 Because Ruddell did not file an answer, the statute of limitations does not bar Plaintiff’s  
26 claim against her. See Fed. R. Civ. P. 8(c) (listing statute of limitations as a defense that must be  
27 affirmatively stated in responding to a pleading). However, as referenced above, the Court finds

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1 that Ruddell does not possess any preserved interest in the Property. The Court therefore dismisses  
2 BNY's single remaining claim against Ruddell.

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4 **VI. CONCLUSION**

5 **IT IS THEREFORE ORDERED** that the stay in this case is LIFTED.

6 **IT IS FURTHER ORDERED** that SFR's Motion for Summary Judgment (ECF No. 57)  
7 is GRANTED.

8 **IT IS FURTHER ORDERED** that BNY's Motion for Summary Judgment (ECF No. 55)  
9 is DENIED and its remaining claims DISMISSED.

10 **IT IS FURTHER ORDERED** that the Court issues declaratory relief in favor of SFR and  
11 states the following: that the foreclosure sale and the resulting foreclosure deed are valid as a  
12 matter of law; that SFR is the rightful owner of title to the Property; and that BNY and Ruddell  
13 have no legally cognizable interest in the Property at this time.

14 **IT IS FURTHER ORDERED** that the Clerk of Court enter judgment against BNY as to  
15 all claims and close this case accordingly.

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17 DATED: March 31, 2019.

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20 RICHARD F. BOULWARE, II  
21 UNITED STATES DISTRICT JUDGE  
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